BROCHURE

ON

APPLICABILITY OF R.C. ACT AND EXEMPTION THERE FROM

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1. Relevant Provisions

(Except those quoted at appropriate places)

General Clauses Act.

Section 6 Effect of repeal.- where this Act, or any [Central Act] Or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not –

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture of punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be institute, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

U.P. R.C. Act Sections:

S.1 Short title, extent, application and commencement.- (1) This Act may be called the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972.

(2) It extends to the whole of Uttar Pradesh.

(3) It Shall apply to-

(a) every city as defined in the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U.P. Act On. II of 1959);

(b) every municipality as defined in the United Provinces Municipality Act, 1916 (U.P. Act No. II of 1916);

(c) every notified area constituted under the United Provinces Municipalities Act, 1916 (U.P. Act No. II of 1914);

(d) every town areas constituted under the United Provinces Town Areas Act, 1914 (U.P. Act No. II or 1914) :

Provided that the State Government, if it is satisfied that it is necessary or expedient so to do in the interest of the general public, residing in any other local area, may by notification in the Gazette declare that this Act or any part thereof shall apply to such area and thereupon this Act or part shall apply to such area:

Provided further that the State Government, if it is satisfied that it is necessary or expedient so to do in the interest of general public, may by notification in the Gazette-

cancel or amend any notification issued under the preceding proviso; or

declare that the Act or any part thereof, as the case may be, shall cease to apply to any such city, municipality, notified area, town area or other local area as may be specified and thereupon this Act or part shall cease to apply to that city, municipality, notified area, town area or other local area and may in the like manner cancel or amend such declaration.

(4) It shall come into force on such date as the State Government may by notification in the Gazette appoint.

S. 2. Exemptions from operation of Act.- (1) Nothing in this Act shall apply to the following, namely:-

(a) any building of which the Government or a local authority or a public sector corporation [or a Cantonment Board] is the landlord; or]

(Local authority and public sector corporation defined under Section 3(m)&(p) infra)

(b) any building belonging to or vested in a recognized educational institution; or

(Recognized educational institutions defined under Section 3(q) infra)

(bb) any building belonging to or vested in a public charitable or public religious institution;

(Charitable and religious institutions defined under Section 3(r) & (s) infra)

(bbb) any building belonging to or vested in a waqf including a waqf-alal-aulad;

(c) any building used or intended to be used as a factory within the meaning of the Factories Act, 1948 (Act No. LXIII of 1948) where the plant of such factory is leased out along with the building; or

(d) any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of manufacture, preservation or processing or any goods) or as a cinema or theatre, where the plaint and apparatus installed for such purpose in the building is leased out along with the building:

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts of the cinema or theatre, the tenancy in respect of which has been

created separately from the tenancy in respect of the cinema or theater; or

(e) any building used or intended to be used as a place of public entertainment or amusement (including any sports stadium, but not including a cinema or theatre), or any building appurtenant thereto; of

(f) any building build an held by a society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) or by a co-operative society, company or firm and intended solely for its own occupation or for the occupation of any of its officers or servants, whether on rent or free of rent or as a guest house, by whatever name called, for the occupation of persons having dealing with it in the ordinary course of business;

(g) any building, whose monthly rent exceeds two thousand rupees;

(h) any building of which a Mission of a foreign country or any international agency is the tenant.

(2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, Section 24-A, 24-B, 24-C or sub- section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed:

Provided that.....

Provided further that where construction of a building is completed on or after April 26, 1985 then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of forty years from the date on which its construction is completed.

(Explanation I quoted at appropriate place)

(m) "Local authority" means a Nagar Mahapalica, Municipal Board, Notified Area Committee or Town Area Committee a Zila Parishad, a Development Authority established under the Uttar Pradesh Urban Planning and Development Act, 1973, or the Uttar Pradesh Awas Evam Viska Parishad established under the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1956;

(n) "Improvement" in relation to a building, means any addition to it or alteration thereof or the provision of any new amenity to the tenant and includes all repairs made in any year the cost whereof exceeds the amount of two months' rent thereof;

(p) "Public Sector Corporation" means any corporation owned or controlled by the Government and includes any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty percent of the paid up share capital is held by the Government;

(q) "Recognized educational institution" means [any University established by law in India or] any institution recognized under the Intermediate Education Act, 1921 or the Uttar Pradesh Basic Education Act, 1972 or recognized or affiliated under the Uttar Pradesh State Universities Act, 1973;

(r) "Charitable institution" means any establishment, undertaking organization or association formed for a charitable purpose and includes a specific endowment;

Explanation.- For the purposes of this clause, the words "charitable purpose" includes relief of poverty, education, medical relief and advancement of any other object of utility or welfare to the general public or any

section thereof, not being an object of an exclusively religious nature;

(s) "Religious institution" Means a temple, math, mosque, church, gurudwara or any other place of public worship.

S. 24 (2) Where the landlord after obtaining a release order under clause (b) of sub-section (1) of Section 21 demolishes a building and contracts a new building or buildings on its site, then the District magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenant's liablity to pay rent as aforesaid, be subject to the provisions of this Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operation of this Act for the period or the remaining period, as the case may be, specified in sub-section (2) of Section 2.

S. 29 (A). Protection against eviction to certain classes of tenants of land on which building exists. (1) For the purposes of this section, the expressions "tenant" and "landlord" shall have the meanings respectively assigned to them in clauses (a) and (j) or Section 3 with the substitution of the word "land" for the word "building".

(2) this section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expense in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with sub-section (5).

(5) the District magistrate shall on the application of the landlord or the tenant det4rmine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section(6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

(6) (a) In any suit or appeal or other proceedings pending immediately before the date of commencement of this section, no decree for eviction of a tenant form any land to which this section applies, shall be passed or executed except on one or more of the grounds mentioned in sub-section (2) of Section 20, provided the tenant, within a period of three months form the commencement of this section by an application to the Court, unconditionally offers to pay to the landlord, the enhanced rent of the land for the entire period in suit and onwards at the rate of ten per cent annum of the prevailing market value of the land together with costs of the suit (including costs of any appeal or of any execution or other proceedings).

(b) In every such case, the enhanced rent shall, notwithstanding anything contained in sub-section (5), be determined by the Court seized of the case at any stage.

(c) Upon payment against a receipt duly signed by the plaintiff or decree- holder or his counsel or deposit in Court of such enhanced rent with costs as a aforesaid being made by the tenant within such time as the Court may fix in this behalf, the Court shall dismiss the suit, or, as the case may be, discharge the decree for eviction, and the tenancy thereafter, shall continue annually on the basis of the rent so enhanced.

(d) If the tenant fails to pay the said amount within the time so fixed (including any extended time, if any, that the Court may fix or for sufficient cause allow) the Court shall proceed further in the case as if the foregoing provisions of the section were not in force.

(7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or any other law for the time being in force.

S. 39 Pending suits for eviction relating to buildings brought under regulation for the first time.- In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month form such date of commencement or from the date of his knowledge of the pendency of the suit, whichever be later, deposits in the Court before which the suit is pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's full cost of the suit, no decree for eviction shall be passed except on any of the grounds mentioned in the proviso to sub-section (1) or in

clauses (b) to (g) of sub-section (2) of section 20 and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary:

Provided that a tenant the rent payable by whom does not exceed twenty-five rupees per month need not deposit any interest as aforesaid:

S. 40. Pending appeals or revisions in suits for eviction relating to buildings brought under regulation for the first time- where an appeal or revision arising out of a suit for eviction of a tenant from any building to which the old Act did not apply is pending on the date of commencement of this Act, it shall be disposed of in accordance with the provisions of Section 39, which shall *mutatis mutandis* apply.

2. Applicability of Act

2A. General

Almost all the rent control Acts apply to the buildings, along with appurtenant lands, situate in Cities or towns but not in villages. Many R.C. Acts carry the word 'urban' in their title e.g. U.P. and Punjab R.C. Acts. Some Acts also use the word building in their titles e.g. U.P. & A.P. R.C. Acts. By virtue of its section 1 (3), U.P. R.C. Act applies to every Nagar Mahapalika, municipality, notified area and town area. (Notified and town areas are now (after 1994) Nagar Panchayats). By virtue of two provisos to the said sub section, state government may by notification apply the Act or part thereof to an area to which it does not apply by virtue of the main sub section (e.g. to a particular village or part thereof) and vice versa, take out some area, to which the Act applies, from its operation e.g. some city. Similar provisions are there under other R.C. Acts U.P. R.C. Act does not authorize the State Government to apply the Act on or withdraw its application from specified buildings alone. However some R.C. Acts confer such powers on State Government e.g. Andhra Pradesh and Punjab.

In respect of U.P. R.C. Act 1972 a strange view was taken in *Ratan Lal*[80] that the Act (or Section 2(2) providing 10 years exemption) was prospective and applicable only to the buildings constructed after enforcement of the Act i.e. 15.7.1972. Subsequently contrary view was taken in *Ramsaroop*[75]. Both the judgments were written by Krishna Iyer J. The matter was referred to large Bench of three judges in *Om Prakash*[66], which overruled *Ratan Lal*[80]. This point has further been explained in *Ramesh Chandra*[76] and *Om Prakash*[76] has been followed. In this regard in *Lal Chand*[39] also *Om Prakash*[66] and *Ramesh Chan*[76] have been followed.

2B. Building

Even though section 1 of U.P. R.C. Act does not refer to building however use of the word 'building' in the name of the Act and its different sections (2, 2A,4, 5, 6, 7, 8, 9, 9-A, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 24, 24-B, 24-C, 25, 26, 28, 28-A, 29, 30, 31, 34, 39, 40) makes it abundantly clear that it applies to building and not land. Section 3(i) defines building as follows:

> *(i) "Building", means a residential or non-residential roofed structure and includes-*
>
> *(i) Any land (including any garden), garages and out-houses, appurtenant to such building;*
> *(ii) Any furniture supplied by the landlord for use in such building;*
> *(iii) Any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof;"*

In *Ashok Kapil*[5] under U.P.R.C. Act, after vacation of the building by the tenant a third person applied for allotment. The landlord pulled down the roof and argued that it could not be allotted as being roofless it was not included in the definition of building under Section 3 (i) . The Supreme Court held that landlord could not be permitted to take advantage of his own fault and to check that took recourse to dictionary meaning of the building according to which even roofless structure can be building. The allotment order, which had been set aside by the High Court as being without jurisdiction, was restored. However, the rent which was fixed in the allotment order was found to be palpably inadequate hence it was increased to Rs. 500/- per month.

By virtue of section 2(iii) of A.P.R.C. Act building means a house (or a hut) or part thereof including appurtenant gardens, grounds etc. let out along with the house; and furniture and

fittings supplied or affixed by landlord for use in the let out house or part thereof. In *Koti Saroj*[35] it was held that if saw mill machinery covered by Zinc sheet shed is let out, it is letting of machinery and not building as the predominant purpose of lease is machinery and shed is only an adjunct.

Under Bombay R.C. Act 1947and C.P. and Berar R.C. order 1949 the definition of premises is given under Sections 5(8) and 2 (4A) respectively, according to which premises also means 'any land not being used for agricultural purposes'. Supreme Court in *Nalanikant*[58] (C.B.), interpreting Bombay R.C. act held that the crucial date to determine the nature of the use of the land is the date on which the rights under the Act are exercised. In the said case in 1889, much before passing of Bombay R.C. Act 1947, agricultural land had been let out with the permission to construct factory etc. thereupon which was constructed immediately thereafter. It was held that the Act was applicable.

Under Kerala Land Reforms Act 1963 a lessee of land may be assigned right title and interest therein. However, it is provided that this provision shall not apply to 'leases only of buildings including a house, shop or warehouse and the site thereof with the land if any appurtenant thereto'. In *K. Bhagirathi*[26] initially only a small house was let out. After about 3 years of expiry of lease, during which tenant continued to remain in possession, fresh lease was executed which included the house as well as about 1.5 acres of appurtenant land containing about 100 fruit trees. It was specially provided in the lease deed that tenant would not be entitled to carry any profit earning activity on the land, except using the fruits. The Supreme Court held that the lease was of house with appurtenant land even though it was quite large, and not either independently or predominantly of the land hence tenant was not entitled to the benefit of Land Reforms Act. It was observed in first two sentences of para 8 as follows:

"The word "appurtenant" when used in connection with leases of properties, has gained wider as well as narrower interpretations through judicial pronouncements. Such divergence in the interpretation was necessitated to comply with legislative intent while considering facts of each case."

In *Kamla Devi*[30] under Delhi R.C. Act the tenant of a building encroached upon adjoining open piece of land belonging to the landlord and constructed latrine thereupon. Suit for demolition was filed by the landlord which was compromised and the tenant was made tenant of the site of the latrine also. After 5 years landlord filed suit for eviction from the portion covered by latrine, after terminating the tenancy with regard thereto. Supreme Court held that the tenancy was only of open land hence Delhi R.C. Act was not applicable. It was also held that superstructure belonged to the tenant himself hence landlord could not let that out to him.

Section 108(B)(e) Transfer of Property Act provides as under:-

"S. 108(B)(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;"

In *Vannattankandy*[96] (under Kerala R.C. Act) it was held that the provision did not apply to the tenancies covered by R.C.Acts. A contrary view was taken in *T. Lakshmipathi*[94] (under A.P.R.C. Act). The matter was referred to larger Bench of 3 judges in *M/S Shaha Ratansi*[46] (under Bombay R.C. Act) which

overruled *Vannattakandy*[96] and held that if the structure was demolished by landlord or falls down due to rain etc., the tenant might opt to continue as tenant and there was no automatic determination of tenancy, in such situation.

Under U.P.R.C. Act 1972 this contingency is taken care of by its section 29, infra.

> "*Section 29. Special protection to tenants of buildings destroyed by collective disturbances, etc.—(l) Where in consequence of the commission of mischief or any other offence in the course of collective disturbances, any building under tenancy is wholly or partly destroyed, the tenant shall have the right to re-erect it wholly or partly, as the case may be, at his own expenses within a period of six months from such injury:*
>
> *Provided that if such injury was occasioned by the wrongful act or default of the tenant he shall not be entitled to avail himself of the benefit of this provision.*
>
> *(2) Where in consequence of fire, tempest, flood or excessive rainfall, any building under tenancy is wholly or partly destroyed the tenant shall have the right to re-erect or repair it wholly or partly, as the case may be, at his own expense after giving a notice in writing to the landlord within a period of one month from such injury:*
>
> *Provided that the tenant shall not be entitled to avail himself of the benefit of this provision-*
>
> *(a) if such injury was occasioned by his own wrongful act or default; or*
>
> *(b) in respect of any re-erection or repair made before he has given a notice as aforesaid to the landlord or before the expiration of a period of fifteen days after such notice, or if the landlord in the meantime makes an application under Section 21, before the disposal of such application; or*
>
> *(c) in respect of any re-erection or repair made after*

the expiration of a period of six months from such injury or, if the landlord has made any application as aforesaid, from the disposal thereof.

(3) Where the tenant, before the commencement of this Act, has made any re-erection or repair in exercise of his rights under Section 19 of the old Act, or after the commencement of this Act makes any re-erection in the exercise of his right under sub-section (1) or sub-section (2),-

(a) the property so re-erected or repaired shall be comprised in the tenancy;

(b) the tenant shall not be entitled, whether during the tenancy or after its determination, to demolish the property or parts so erected or repaired or to remove any material used therein other than any fixtures of a movable nature;

(c) Notwithstanding, anything contained in sub-section (2) of Section 2, the provisions of this Act shall apply to the building so re-erected :

Provided that no application shall be maintainable under Section 21in respect of any such building on the ground mentioned in clause (b) of sub-section (1) thereof within a period of three years from the completion of such re-erection.

Similar provision was there under Section 19 of old U.P.R.C.Act 1947. Interpreting the said section it was held in *Lal Chand*[39] that it would not apply if tenant voluntarily vacated the tenanted building upon an understanding that he would be put back into possession after demotion and reconstruction and after reconstruction he was put back into possession. In such situation building would be treated to be new and not covered by U.P. R.C. Act 1972 for 10 years.

2 C. Vis-a-vis other Acts

In the following cases it has been held that section 22 (1) of Sick Industrial Companies (Special Provisions) Act 1985 **(SICA)** does not affect eviction proceedings under Rent Control Acts.

(i) *Shree Chamundi Mopeds*[88] (paras 11 &12) (Karnataka R.C. Act)
(ii) *Gujarat Steel*[25] (paras 9 & 10)
(iii) *Dunlop India*[21] (paras 30 & 31) (Karnataka R.C. Act)
(iv) *M/s Madras Petrochem*[43] (para 52)

In *Vishal*[98] it has been held that Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act 2002 **(SARFAESI Act)** does not prevail upon Rent Control Acts. A landlord had offered the tenanted premises as Collateral Security to the Bank. On default in payment the Bank under SARFAESI Act first gave requisite notice to the borrower and on his failure to clear the dues filed application before the Magistrate for possession by eviction of the tenant. Supreme Court held that the application was not maintainable. It held that the only effect of the proceedings under SARFAESI Act was that the creditor bank (or other institution) stood substituted as landlord and entitled to receive the rent but it could evict the tenant only under relevant R.C. Act if any ground of eviction there under existed.

As far as **Public Premises (Eviction of Unauthorized Occupants) Act 1971** is concerned it has been held that the Act prevails upon Delhi R.C. Act 1958 vide *Ashoka Marketing*[6] (C.B) and Bombay/Maharashtra R.C. Acts vide *Kaiser-I- Hind*[29] (C.B.), *Crawford and Banatwala*[10]. Para 32 of *Banatwala*[10] is quote below:

> *32. "Before we deal with the rival submissions on the maintainability of the standard rend application, we may not that with respect to the aspect of eviction of unauthorized occupants from the public premises, it is now well settled that the public Premises Act will apply and not the Bombay Rent Act or the subsequent MRC Act."*

Thereafter reference was made to *Kaiser-I-Hind*[29]and *Crawford*.

However in *Banatwala*[10] supra it was further held that Public Premises Act only dealt with eviction and recovery of rent hence for other matters e.g. fixation of standard rent and restoration of amenities M.R.C. Act would be applicable.

The Government of India has issued following guidelines to prevent arbitrary use of powers to evict genuine tenants from Public Premises under the control of Public Sector Undertakings/ Financial Institution vide Resolution no.2103/1/2000-Pol. 1, dated 30th May, 2002 published in the Gazette of India Part 1, Sec. 1, dated 8th June, 2002 (included in the Bare Act of 2007 by Universal Law Publishing Co. Pvt. Ltd.)

1. *The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions has been under consideration of the Government for some time past.*
2. *To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under section 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:*
   - *(i) The provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 [P.P. (E) Act, 1971] should be used primarily to evict totally unauthorized occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.*
   - *(ii) The provisions of the P.P.(E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the*

premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P.(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise

than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect

As far as U.P. R.C. Act is concerned it does not apply to any building of which the government or a local authority or a Public Sector corporation or a Cantonment Board is the landlord [Section 2 (1) (a)]. Under Public Premises Act 1971 as well as U.P. Public Premises Act 1972 buildings belonging to these authorities are Public premises (Sections 2(e) of both the Acts). Accordingly in respect of such buildings there is no repugnancy or conflict between both the Acts. However there are some buildings which are included in the definition of Public Premises under U.P. Public Premises Act under section 2(e) (iv) infra but not exempted under U.P.R.C. Act.

2 (e) Public premises means any premises belonging to ……

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly of public officers or nominees of the State Government, or both,

(i) Nazul Land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Goan Sabha or any other local authority under any law relating to land tenures);

(ii) any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement

executed under Section 41 of that act providing for re-entry by the State Government in certain conditions;

U.P. Public premises Act 1972 received the assent of the President on 28.4.1972 and was published in the Gazette on 1.5.1972. It came into force at once. U.P. R.C. Act was given assent by the President on 02.03.1972 and was published in the Gazette on 31.3.1972. Both these dates are earlier than the corresponding dates of U.P. Public Premises Act 1972. However, U.P. R.C. Act came into force on 15.7.1972 by virtue of notification under its section 1(4). The Act which received the assent later (i.e. U.P. Public Premises Act) will prevail upon the Act which received the assent earlier (i.e. U.P. R.C. Act). For the principle later Act prevails over earlier Act by same legislature see…….

Under Section 23 of **U.P. Slum Areas (Improvement and Clearance) Act 1962,** infra, decree or order for eviction against thenant, even if R.C. Act applies, cannot be executed without permission the the Competent Authority under the Act, if the building is situate in an area which has been declared under Section 3 to be slum area.

"Sec. 23. Tenant in slum areas not to be evicted without permission of Competent Authority.-(1). No decree or order for the eviction of a tenant from any building or land in slum area shall, except as hereinafter provided and till such time the declaration under Section 3 is in force, be capable of being executed; anything contained in any other law for the time being in force to the contrary notwithstanding.

(2) A decree or order referred to in sub-section (1) may be put into execution after obtaining the permission of the Competent Authority in accordance with the provisions of sub- section (3).

(3) An application for obtaining the permission of the Competent Authority under sub-section (2) shall be made in such form and contain such particulars as may be prescribed.

(4) on receipt of such application the Competent Authority, after affording reasonable opportunity to the applicant and the tenant of being heard and after making such inquiry into the circumstances of the case as it thinks fit, may, where it is of the opinion that the execution of the decree or order shall defeat or be detrimental to the enforcement of the provisions of this Act, reject the application but in all other cases grant it.

(5) Where the Competent Authority refuses to grant the permission, it shall record in brief its reasons for such refusal and make available a copy thereof to the applicant.

Similar provision is there under Slum Areas (Improvement and Clearance) Act 1956 which applies only to Union Territories**.**

In *Sarwan Singh* Supreme Court held that the provisions of Delhi Rent Control Act 1958 providing special, speedier procedure for eviction of tenant of a landlord who is Government servant and who has been asked to vacate official accommodation, prevails on other provisions of Delhi Rent Control Act as well as Slum Areas Act, hence, for executing the order or decree of eviction passed under the said provision there is no need to seek permission of the competent authority. Delhi Rent Control Act provides right to recover immediate possession to such landlords and further states that such right will accrue notwithstanding anything contained elsewhere in this Act or in any other law for the time being enforced or in any contract. In *Lal Chand*[38] suit for eviction of tenant from entire tenanted premises was decreed. The premises was situate in slum are of Delhi. The landlord therefore sought permission of Competent Authority under Slum Area Act 1956. The permission was

granted only for part of the premises. Accordingly decree was executed in respect of that part. Thereafter landlord instituted fresh suit for eviction of the tenant from the rest part. The Supreme Court held the suit to be not maintainable.

Co-operative Societies Acts of different States provide for remedy of arbitration in case of disputes between members and the society (Section 70 of U.P. Co-operative Societies Act and Section 91 of Maharashtra Cooperative Societies Act).

In *Deccan Merchant*[18] under Maharashtra Co-operative Societies Act the leading authority on the point, it has been held that Bombay Rent Control Act 1947 would prevail upon the Cooperative Societies Act, hence, no reference under Section 91 can be made for eviction of the tenant of a Co-operative Society and eviction can be sought only through suit before JSCC. In para 31 it was mentioned that same would be the position in other States. In respect of the tenants/ licencees of co-operative societies in Maharashtra same view has been taken in *Sanwar Mal Kejrival* and *Narendra K. Kochar*. In the last authority 3 earlier decisions of the Supreme Court reported in *O. N. Bhatnagar, A.B.R. & Co. and Electrical Cables* were distinguished on the ground that in those cases licenses had been granted after 1.2.1973, hence, under Bombay Rent Control Act 1947 licencees did not become tenants.

Regarding applicability of U.P.R.C. Act to **Cantonment areas** has been held in paras 2 to 6 and 8 of the authority reported in *Ruchira Vinayak v. 2nd ADJ Meerut, 2005 (1) ARC 24* as follows:-

> *"2. In exercise of the powers conferred by Section 3 of the Cantonment (Extension of Rent Control Laws) Act. 1957 and in supersession of the notification dated 1.9.1973 (S.R.O. 259) Central Government through notification S.R.O. 47, dated 17.2.1982 extended to all the cantonments in the State of U. P., U. P. Act No. 13 of 1972*

with certain modifications mentioned therein. Two notifications of 1.9.1973 and 17.2.1982 are substantially similar with minor difference which are not relevant for the decision of the instant case.

3. Section 1 (3) of U. P. Act No. 13 of 1972 provides that the said Act shall apply to (a) every city ; (b) every municipality ; (c) every notified area and (d) every town area. Through the aforesaid notifications of September, 1973 and February, 1982 Clause (e) has been added to Section 1 (3) of U. P. Act No. 13 of 1972 which is as under :

"(e) Every cantonment in U. P. declared to be a cantonment under Section 3 of the Cantonment Act, 1924."

4. By virtue of Section 2 of U.P. Act No. 13 of 1972 the said Act does not apply to the building mentioned under the said section. Through aforesaid notifications of September, 1973 and February, 1982, Clause (cc) has been added to Clause 2 (1) of U.P. Act No. 13 of 1972 which is as follows :

"(cc) Any building within the cantonment, which is or may be appropriated by the Central Government on lease under the Cantonment (House Accommodation) Act, 1923."

5. This is in consonance with Section 3 proviso (c) of Cantonment (Extension of Rent Control Laws) Act. 1957 which is quoted below :

"3 (1) The Central Government may by notification in the Official Gazette extend to pay cantonment with such restriction and modifications as it thinks fit any enactment relating to the control of rent and regulation of house accommodation which is in force in the state in which the Cantonment is situated.

Provided that nothing contained in any enactment so extended shall apply to,

(a)

(b)

(c) any house within cantonment which is or may be appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923."

6. The net result is that U. P. Act No. 13 of 1972 applies to cantonment areas but not to such house, which "are or may be appropriated by the Central Government on lease under 1923 Act."

8. In Section 5 of Cantonment (House Accommodation) Act, 1923, it is provided that every house situate in the cantonment covered by notification under Section 3 (1) shall be liable to appropriation by the Central Government on lease subject to the conditions provided thereafter. Section 10 of the said Act states that no notice shall be issued under Section 7 (such notice being the first step towards appropriation) with regard to certain accommodation."

(Notification of 1973 was upheld by the Supreme Court in *Brij Sunder Kapoor)* ultimately it was held (in *Ruchitra Vinayak)* that U.P. R.C. Act applies to all the buildings within a cantonment regarding which notification has been issued under Section 3(1) of Cantonment (House Accommodation) Act 1923 except the buildings which are appropriated on lease by the Central Government under the said Act.

2D. Pending suits:

R.C. Act may apply to a building in the **contingencies** given below:

(i) When the Act is enforced (U.P.R.C. Act enforced on 15.07.1972).
(ii) When the period of exemption / moratorium is over.
(iii) When the Act is applied to a new area/ premises

2D(i) First and Second Contingencies:

After enforcement of **U.P.R.C.Act 1972** on 15.7.1972, Allahabad High Court consistently interpreted its section 39 (quoted in synopsis 1) in such manner that it covered both the contingencies. The words 'commencement of this Act' were interpreted to mean the date on which the Act became applicable to a building [after expiry of exemption period of 10 years from date of construction as provided under Section 2(2)] vide *R.D.Ram Nath v. Girdhari Lal 1975 ALJ 1.* Accordingly section 39 (and consequently the Act) applied to the buildings which were 10 years old on 15.7.1972 and suit for eviction was pending on the said date as well as on the buildings which were not 10 years old when suit for eviction was filed (whether before or after 15.7.1972) but 10 years exemption period expired during pendency of suit (or revision / appeal). In 1982 the Supreme court in *Om Prakash*[66] for the first time confined the words 'commencement of this Act' to the date on which the Act was enforced i.e. 15.7.1972. It further held that those suits for eviction which were instituted after 15.7.1972 and during the period of exemption would have to be decided without giving benefit of the Act to the tenant even if 10 years period of exemption expired during pendency of suit (or appeal / revision). This view has, since *Om Prakash*[66], been consistently taken by the Supreme court except for a brief spell from 1985 to 1987, infra. As far as **Haryana R.C. Act** is concerned, like U.P.R.C. Act it also contains provision of 10 years exemption. However there is

no provision in Haryana Act like section 39 of U.P. R.C. Act. Still interpretation regarding applicability of the Act in respect of U.P.R.C. Act has been applied to Haryana R.C. Act.

Most of the Supreme Court authorities under both the contingencies are under U.P. Rent Control Act i.e. *Ram Saroop*[75], *Om Prakash*[66], *Vineet Kumar*[97], *Nand Kishore*[59], *Shiv Kumar*[87], *Suresh Chand*[92], *Ramesh Chand*[76],*Bhola Nath*[12] and *Lal Chand*[39] (nine in number.). Two cases i.e. *Atma Ram*[7] and *Kishan*[34] relate to Haryana R.C. Act in which it has been held that provisions of exemption of 10 years in both the Acts are almost identical. In both these cases reliance was placed upon the authorities under U.P. R.C. Act and *Atma Ram*[7] was relied upon in subsequent authorities under U.P. R.C. Act.

In all the authorities except *Vineet Kumar*[97] (and *Shiv Kumar*[87]) it has been held that if eviction suit is instituted during exemption period then it will have to be decided unaffected by the R.C. Act even if during pendency of suit (or revision / appeal) exemption period expires. *Vineet Kumar*[97], taking contrary view, has been dissented, held to be against larger Bench of *Om Prakash*[66], erroneous and not good law in the subsequent authorities (except *Shiv Kumar*[87])

In *Ram Saroop*[75] the only question involved was regarding date of construction [see synopsis 3B (i)]. However in para 1 it was observed (by way of prelude) as follows:-

> *"……. The legislature found that rent control law had a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release from the shackles of legislative restriction, new construction for a period of ten years. So much so a landlord who had let out his new building could recover possession without impediment if he instituted such proceeding within ten years of completion……"*

In *Om Prakash*[66] (3 judges) also it was held in para 6 that even if actual occupation was prior to first assessment still in view of section 2(2) of U.P.R.C. Act date of first assessment would be date of Construction [see synopsis 3B (i)]. It was accordingly held that 10 years period from date of first assessment had not expired until High Court decided the revision. Thereafter in para 7 it was held as follows:-

> *"7. Further, in order to attract section 39 the suit must be pending on the date of commencement of the Act which is 15th of July, 1972 but the suit giving rise to the present appeal was filed on 23rd of March, 1974 long after the commencement of the Act. There is yet another reason why section 39 will have no application to the present case. In view of sub-section (2) of section 2 of the Act the Act is not applicable to a building which has not a standing of ten years and if the Act itself was not applicable, it would be absurd to say that section 39 thereof would be applicable."*

Vineet Kumar[97] (by 2 judges), in para 14, held the above quoted findings in para 7 of *Om Prakash*[66] to be unnecessary (obiter), as 10 years exemption period had not expired when High Court had decided the revision, hence not binding. The judgment of the trial court, approved by the High Court, based on *Om Prakash*[66] was set aside. It is strange that Justice R.B. Misra, who was elevated from Allahabad High Court, was member of both the Benches and his lordship himself wrote both the judgments. In para 13 it was observed as follows:-

> *"13. The moment a building becomes ten years old to be reckoned from the date of completion, the new Rent Act would become applicable. Admittedly the building was not ten years old on the date of suit. But during the pendency of the litigation it completed ten years. Then the question arises whether the new Rent Act will be attracted if the building completes ten years during the course of litigation.*

The Additional District Judge decided the case on 23rd February 1982. By that time the building in question had completed ten years."

Pasupuleti[72] was relied upon for the proposition that the changed circumstances coming into existence during pendency of proceedings must be taken into consideration.

In *Nand Kishore*[59] (2 judges), *Vineet Kumar*[97] was found to be in conflict with *Om Prakash*[66], larger Bench, hence *Om Prakash*[66] was followed. It was contended that during pendency of appeal before Supreme Court 10 years period had expired hence tenant was entitled to the benefit of section 40. The contention was rejected. However at the end of para 13 regarding *Vineet Kumar*[97] it was observed as follows:

"But unfortunately attention of the Court was not drawn to the Om Prakash Gupta's case (supra) which specifically considered this Act and the language of Section 39 in particular and is a decision of a Bench of three Judges which is binding on us."

In fact *Vineet Kumar*[97] had noticed *Om Prakash*[66]. The contrary observation in above sentence was an inadvertent slip.

In *Shiv Kumar*[87] the question was not finally decided as the tenant had deposited the requisite amount after more than one month from the date on which 10 years exemption period expired, which was during pendency of the suit. Setting aside the High Court judgment, it was held that one month's time to make deposit would start from the date of construction and not from the date on which tenant became aware of the date of first assessment which is treated to be date of construction in view of Section 2(2). However in para 9 agreement with the view taken in *Vineet Kumar*[97] was expressed.

Atma Ram[7] was a case under Haryana R.C. Act. After observing that provisions of exemption for 10 years in both the Acts were almost identical, *Om Prakash*[66] and *Nand Kishore*[59] were followed in preference to *Vineet Kumar*[97]. *Ram Saroop*[75] was also referred. After quoting the above quoted portion of *Ram Saroop*[75] in para 7 it was observed in para 8 that in case the Act was held to be applicable on expiry of 10 years during pendency of suit / appeal the exemption and the incentive will become illusory, ultimate disposal of case within the period of exemption of 10 years is in reality an impossibility and no one shall suffer for fault of the Court. It was held that purposive interpretation must be adopted and in order to gather the intention of the legislature and the meaning which it intended to be conveyed through words, the purpose for which the provision was made must be borne in mind. Second and third sentences of para 9 are quoted below:

> *"Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions of the time when the law was made, by signs most natural and probable. And these sings are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (Underlined by the Court)"*

In *Suresh Chand*[92] (3 judges), at the end of para 12, the slip in *Nand Kishore*[59] that *Vineet Kumar*[97] had not considered *Om Prakash*[66] was noticed. In para 10 it was held that *Vineet Kumar*[97] rightly distinguished *Om Prakash*[66].

However in para 12 in respect of ratio of *Vineet Kumar*[97] it was held as follows:

> *"12. We find, with respect that their lordships committed an error in overlooking the text of section 39 of the Act……"*

In para 13 reference to *Atma Ram*[7] was made.

After independent analysis, from para 14 onwards, it was held that the words 'Commencement of the Act' mean 15.7.1972 the date on which the Act was enforced and not the date on which the Act applies on a particular building by efflux of 10 years period of exemption. (The same thing which was held in *Om Prakash*[66]*)* Contrary view taken by a Division Bench of Allahabad High Court in *R.D. Ram Nath v. Girdhari Lal 1975 ALJ 1* was disapproved. At the end of para 17 it was held that acceptance of contrary interpretation will encourage the tenants to protract the litigation.

It is submitted with respect that the finding regarding interpretation of Section 39 in *Om Prakash*[66] was not unnecessary or obiter as held in *Vineet Kumar*[97] and reaffirmed in *Suresh Chand*[92]*.* Ten years period of exemption had expired if calculated from date of occupation but not if calculated from date of first assessment. The Court held that date of first assessment is date of construction. The court also held that section 39 could not apply even if ten years period had expired. None of the two reasons can be said to be unnecessary. If the criticism that decision on interpretation of section 39 was unnecessary is correct then it may also be said that the decision on date of construction (first assessment and not actual occupation) was unnecessary as the court ultimately held that section 39 would not apply as the suit was instituted after 15.7.1972 the date of commencement of the Act. Out of various reasons given for accepting or rejecting a contention, each reason is necessary/ ratio and none of the reasons can be said to be unnecessary / obiter. Merely because one of the reasons is mentioned first in the judgment it cannot be said that the judge intended it to be the main reason.

In *Ramesh Chand*[76], the authority of *Suresh Chand*[92] was not noticed and agreement with *Nand Kishore*[59] was expressed in preference to *Vineet Kumar*[97] (para 12).

In *Bhola Nath*[12] almost all the previous authorities were referred and without saying anything further the view taken therein, except *Vineet Kumar*[97], was followed.

In *Kishan*[34] (3 judges), under Haryana R.C. Act, in paras 9 to 19 all the above authorities (except *Om Prakash*[66] and *Shiv Kumar*[87]) were considered. *Amar Nath*[24], *Mohinder Kumar*[52] and *Paripati*[70] (discussed hereinafter few paragraphs) were also discussed. Thereafter it was held in para 20 as follows:

> *"20. Thus it is seen that this Court has been consistently taking the view that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption came to an end during the pendency of the suit. The only discordant note was struck in Vineet Kumar v. Mangal Lal Wadhera, AIR1985 SC 817. We have noticed that several decisions subsequent thereto have held that Vineet Kumar is not good law. We have already construed the relevant provisions of the Act and pointed out that there is nothing in the Act which prevents the civil court from continuing the suit and passing a decree which could be executed."*

Relevant provisions of U.P. and Haryana R.C. Acts have been treated to be identical and interpretation of one has been applied on the other. However, the difference in language of both, in the light of two Constitution Bench authorities of *Shah Bhojraj*[86] and *Rafiqunnissa*[74], infra, requires deeper analysis in some future case.

Section 20(2) of U.P.R.C. Act provides as under:-

"*(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely.*"

As the restriction is on institution of suit but not on its decision hence a suit instituted before the applicability of the Act on the building will remain unaffected by the act even if during its pendency the Act becomes applicable dur to lapse of period of exemption vide *Nand Kishore*[59], para 14.

However, under Haryana R.C. Act the position is different. Its section 13 (1) provides as under:-

> *"A tenant..... shall not be evicted ....except in accordance with the provisions of this section."*

In *Atma Ram*[7] under Haryana R.C. Act that part of *Nand Kishore*[59] was quoted which considered the specific language of Section 20(2) of U.P. R.C. Act, without noticing its distinction with section 13(1) of Haryana Act.

In *Kishan*[34], the other authority under Haryana Act, the difference in language of both the provisions was pointed out but the contention was rejected rather cursorily in para 21, which is quoted below:-

> *"21. Learned counsel for the appellants attempted to make a distinction between the provisions of the Section 20 of the U.P. Act and Section 13 of the present Act. The wording in the former is as follows :*
>
> *"Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner."*

According to the learned counsel bar against the institution of a suit would stand on a different footing from bar against eviction as such which is contained in Section 13 of the Act. In our opinion the difference in language does not help the appellants in any manner. We have already pointed out that Section 13 of the Act does not make any reference to a decree passed in a civil suit. When a suit is validly instituted and the rights of parties which had crystallised on the date of the suit are determined by a decree in that suit the execution thereof cannot be stopped by the provisions of Section 13 of the Act. Hence, we are unable to accept any of the contentions of the appellants. In the result the appeals fail and are dismissed. There will be no order as to costs."

(See also para 13 of *Shah Bhojraj*[86](CB) and para 12 of *Rafiqunnissa*[74] (CB) quoted under next sub-synopsis.)

As far as **Section 39, U.P.R.C. Act** is concerned as discussed above the Supreme Court has emphatically held that it applied only to the suits which were pending on the commencement of the Act i.e. 15.7.1972. In *Omwati Gaur*[67] it has been held that for availing the benefit of this section entire amount as ultimately found due shall be deposited and that also positively within one month. In the said case arrears at the rate of Rs. 80/- per month had been deposited while ultimately rate of rent was found to be Rs. 100/- per month. The benefit was denied. *Mam Chand*[48] was distinguished as in the said case in the deposit under Section 20(4) of U.P. R.C. Act there was negligible deficiency of Rs. 17/- in the total deposit of Rs. 5027/- made by the tenant. However two latent points require consideration. The first is omission of clause (a) of Section 20(2) in section 39. In *Suresh Chand*[92] it was mentioned in para 6 in this regard as follows:

".....Sub-section (2) of Section 20 enumerates the grounds in clauses (a) to (g) on which an eviction suit can be founded against a tenant. Clause (a) permits the institution of a suit for eviction if the tenant is in arrears of rent for not less than four months and has failed to pay the same within one month from the date of service of a notice of demand upon him. The grounds in clauses (b) to (g) are other than arrears of rent. From the fact that a suit founded on anyone or more of the grounds set out in the proviso to sub-section(l) and clauses (b) to (g) of sub-section (2) of Section 20 is exempt from the operation of Section 39, it would seem that the legislature desired to grant protection from eviction where the same is sought on the sole ground of arrears of rent. That is why in the exemption clause contained in Section 39, clause (a) to sub-section (2) of Section 20 which permits eviction on the ground of arrears of rent is deliberately and intentionally excluded and an embargo is created against the passing of an eviction decree if the tenant deposits in court within the time allowed the entire arrears of rent together with interest and costs. If the suit is on anyone or more of the exempted grounds, the landlord is permitted to proceed with the same, if necessary by effecting an amendment in the pleadings and by adducing additional evidence. Such a suit may be continued and if the ground or grounds pleaded is/are proved, the court is entitled to grant eviction. If, therefore, seems clear to us that the legislature intended to protect eviction of a tenant on the ground of arrears of rent if the tenant complied with the conditions of Section 39."

Same thing was said in para 15.

The implication of this finding is that a tenant who was defaulter in payment of rent for more than 4 months and against whom suit for eviction was pending on the date of commencement of the Act i.e. 15.07.1972 and on the said date

the building was more than 10 years old was more protected than a tenant of building, more than 10 years old against whom suit for eviction on the ground of such default was instituted under Section 20(2) (a) of the Act after 15.07.1972. With respect it is submitted that neither it can be nor it is so. The reason for omission is that in case of suit for eviction on the ground of default under section 20(2) (a), the tenant is entitled to protect his possession by depositing entire arrears of rent along with interest and landlord's half cost of the suit on the date of first hearing under Section 20 (4). Benefit of section 39 is also conditional requiring similar deposit (rather more as under Section 39 landlord's full cost of the suit is to be deposited) within one month from 15.7.1972 or date of knowledge of suit. It is for this reason that clause (a) of section 20(2) is not mentioned in section 39.

The second point in this regard is that a superficial reading of Section 39 gives an impression that even if building was less than 10 years old on 15.7.1972, Act will become applicable if suit for eviction was pending on that date. It is not so. For applicability of Section 39, the additional requirement is that on 15.7.1972, the building must be more than 10 years old. If on 15.7.1972 the building is not 10 years old then the Act will not apply. If the entire Act does not apply, it is an absurdity to say that still section 39 of the Act will apply vide *Om Prakash*[66], para 7 quoted above. The position has been summarized in first sentence of para 16 of *Suresh Chand*[92] quoted below:-

> *"It therefore seems to us that the legislature desired to limit the scope of the application of Sections 39 and 40 to suits, appeals and revisions pending on the date of commencement of the Act, i.e. 15th July, 1972, relating to buildings to which the old Act did not apply and to which the new Act was to apply forthwith and not at a later date...."*

In *Shiv Kumar*[87] the suit had been instituted on 11.06.1973 stating in the plaint that the building had been constructed in 1966 (without specifying any date or month). The Supreme Court agreeing with *Vineet Kumar*[97] without noticing *Suresh Chand*[92], held that benefit of section 39 would have been available if within one month from the date of knowledge of pendency of the suit tenant had deposited the requisite amount however it was deposited in April 1976. It is submitted with respect that there are two errors in this judgment. The first is that *Vineet Kumar*[97] was followed in preference to *Nand Kishore*[59]. *Vineet Kumar*[97] was afterwards overruled (held to be erroneous) in *Suresh Chand*[92]. The second and more potential error is the following finding in para 9:

> *"If they had wanted to avail of the benefits conferred by Section 39 and deposit the arrears of rent together with interest, costs etc. the respondents should have deposited the amount within one month from the date of their knowledge of the filing of the suit……"*

Same thing was again said in the same para, after quoting section 39.

As at the time of filing of suit and knowledge of its pendency the building was not 10 years old hence there was no question of applicability of Section 39 or any other provision of the Act. Even if *Vineet Kumar*[97] was to be followed, the deposit was required to be made within one month from the date on which 10 years period of exemption expired or from the date of knowledge of the suit, only if such date was later than the date of expiry of period of exemption i.e. commencement of the Act as interpreted by *Vineet Kumar*[97].

Suppose tenant had come to know about the pendency of suit in October 1973 and had made the requisite deposit under Section 39 within one month there from and the suit had come

up for final disposal in December 1973 or at any time in 1974 or 1975, could the court dismiss the suit [if landlord had not got the plaint amended to add any of the grounds mentioned under section 20(2)(b)to (g)] holding that the Act was applicable? As 10 years period had not expired till the end of 1975 hence such a course was impossible.

Under (East) Punjab R.C. Act 1949 the State Government exercising powers under section 3 of the Act issued notification dated 30.7.1965 which is quoted below:

> *".....In exercise of the powers conferred by section 3 of the Punjab Urban-Rent Restriction Act 1949 and all other powers enabling him in this behalf, the 13-L1061 Sup. Cl/72 Governor of Punjab is pleased to direct that the provisions of section 13 of the said Act shall not apply in respect of decrees for ejectment of tenants in possession of building which satisfy the following conditions, namely :-*
>
> > *(a) Buildings constructed during the years 1959, 1960, 1961, 1962 and 1963 are exempted from all the provisions of the said Act for a period of five years to be calculated from the dates of their completion, and*
> > *(b) During the aforesaid period of exemption suits for ejectment of tenants in possession of those buildings were or are instituted in civil courts by the landlords against the tenants and decrees of ejectment were or are passed".*

Section 13(1) of the Act provides as under:

> *"13(1). A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an*

order made under section 13 of the Punjab Urban Rent Restriction Act 1,947, as subsequently amended.

In *Firm Amar Nath*[24] interpreting the above notification and the section the Supreme Court held that suits for eviction instituted within period of exemption would have to be decided unaffected by the Act even if period of exemption expired during its pendency. Regarding contrary argument by the learned advocate it was observed in para 4 as follows:

> *"4. .....This contention on the very face of it would lead to incongruity or would, if accepted, have the effect of nullifying the very purpose for which the exemption was being given. We were reminded with a somewhat emphatic assertion what appears to us to be unexceptional that the Courts are not concerned with the policy of the legislature or with the result, whether injurious of otherwise, by giving effect to the language used nor is it the function of the Court where the meaning is clear not to give effect to it merely because it would lead to hardship. It cannot, however, be gainsaid that one of the duties imposed on the Courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve. It is clear that the Government intended to grant certain inducements to persons who had, the means to construct buildings by exempting any such building so constructed or a period of 5 years....."*

In para 2 it had been observed that:

> *"Unlike other Rent Control legislations, this Act adopts rather a novel method, in that while it permits suits being filed and decrees obtained, it places restrictions against their execution except on specified grounds."*

The above Act was extended to urban areas of Chandigarh through Act of 1974. Exercising powers under Section 3 of the Act Chief Commissioner issued two notification one on 31.1.1973 (Modified on 24.9.1973) and the other on 24.9.1974. Through first notification the Act was made inapplicable on the new buildings for 5 years. Through the other notification (24.9.1974) it was provided that provisions of Section 13 shall not apply to exempted buildings (not 5 years old buildings). The validity of section 3 and of the above notifications particularly later one was upheld in *M/s Pujab Tin*[44] and *Kesho Ram*[31].

In *M/s Pujab Tin*[44] it was further held that the exemption notification dated 31.1.1973 was prospective and applied only to the buildings deemed to be constructed thereafter. The authority of *Om Prakash*[66] overruling *Ratan Lal*[80] under U.P. R.C. Act 1972 was held not to be applicable on Punjab Act as the wordings of Section 2 of U.P. R.C. Act and of the notification in question were different.

In *Kesho Ram*[31] following *Firm Amar Nath*[24] supra, and referring to *Om Prakash*[66] and *Nand Kishor*[59] (both under U.P. R.C. Act) and *Atma Ram*[7] (under Haryana R.C. Act) it was held that the Act did not apply even if period of exemption expired during pendency of suit for eviction. However at the end of para 16 it was observed as follows:

> *"These decisions no doubt support the view we are taking but we do not consider it necessary to consider these decisions in detail as the provisions of Rent Control Legislation, which were considered in those decisions were quite different which did not expressly preserve the jurisdiction of the civil Court to decree the suit after expiry of the period of exemption, while the*

impugned Notification in express terms, maintains the jurisdiction of the civil Court to decree a suit for eviction, even if the period of exemption expires during the pendency of the suit. There is no provision under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 or the Haryana Urban (Control of Rent and Eviction) Act, 1973 containing similar provision as contained in the impugned Notification. We, therefore, do not consider it necessary to discuss the aforesaid decisions in detail or to express any final opinion about the correctness of the same."

The question is (which has also been highlighted by the above observations of *Kesho Ram*[31]) that on what basis it can be said that under U.P. and Haryana R.C. Acts a suit instituted within period of exemption is to be decided unaffected by the Act even if exemption period is over during pendency of suit? The apprehension that tenant would delay the proceedings and the purpose of the provision (incentive to landlords to construct new buildings) will be defeated can by maximum be an additional reason but not the main reason.

The relevant reason is the principle of interpretation that substantive / vested rights stand crystallized on the date of institution of the suit and are not adversely affected by subsequent changes in factual or legal position unless otherwise provided for expressly or by necessary implication. Further right of the landlord to evict tenant on termination of tenancy, unless restricted by R.C. Act is substantive vested right. This is what has been held in *Parripati*[70] In this authority this reason was super imposed upon *Atma Ram*[7].

See para 13 (of *Parripati*[70]) quoted in synopsis 3G.

The view taken in *Parripati*[70] has been approved in *D.C. Bhatia*[17] (3 judges) and *Ambalal Sarabhai*[3], also discussed in synopsis 3G. Same thing was held in *Moti Ram*[53] (quoted in synopsis 4A).

In Andhra Pradesh, the Government exercising powers under section 26 of A.P.R.C. Act 1960 exempted new buildings from the applicability of the Act for 10 years in 1983. Thereafter section 32 was amended in 2005 and exemption for 15 years was granted by inserting clause (b). The Supreme Court in *Noorunissa*[64] (after discussing several of the above authorities) held that after the amendment, the notification of 1983 in respect of 10 years exemption became redundant. It was further held that unlike U.P. and Haryana provisions section 32 (b) of A.P.R.C. Act was retrospective (para 39) and would affect pending proceedings. For this view reliance was placed on the language of Sections 2(ix) and 10 of the A.P.R.C. Act (in paras 32 and 33) and on *Shah Bhojraj*[86] (extensively quoted in para 30) and on *Rafiqunnissa*[74] (extensively quoted in para 31). Paras 32 and 33 are quoted below:

> *"32. In the present case Section 2(ix) of the Act defines 'tenant' as any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, of a deceased tenant who had been living with the with the tenant in the building as a member of tenant's family up to the death of the tenant including a person continuing in possession after the termination of the tenancy in his favour. Thus it is clear that even if any person after termination of tenancy in his favour is continuing in possession, is covered by definition of 'tenant'.*
>
> *33. Section 10 of the Act relates to 'eviction of tenants'. It protects the tenant from eviction in execution of a decree or otherwise except where eviction is in accordance with the provisions of Section 10 or Sections 12 and 13. A tenant, including a person continuing in possession of the premises after the termination of his tenancy thereby cannot be evicted by execution of a decree or otherwise except in accordance with the provisions of Section 10 or Sections 12 and 13. Therefore, it is clear that till the execution of a decree, the*

tenant including a person continuing in possession after termination of tenancy in his favour is protected under the Act."

2D(ii) Third contingency, Act applied to new area/ premises:-

In the following authorities different R.C. Acts were applied to new areas by notifications. None of the Acts contained a provision like section 39 (or 40) of U.P.R.C. Act. The relevant sections of the Acts regarding eviction of the tenant stated that landlord shall not be entitled to the recovery of possession' (Bombay R.C. Act), 'no order or decree for the recovery of possession shall be made' (W.B.R.C. Act) and 'tenant shall not be evicted' (Assam and East Punjab R.C. Acts). The Supreme Court in each case held that as the bar was against eviction and not institution of suit hence pending suits on the date of extension of the R.C. Act would be affected and eviction decree would not be passed except on one of the grounds mentioned under the relevant R.C. Act.

(i) *Shah Bhoj Raj*[86] (C. B.) under Bombay R.C. Act 1947
(ii) *Rafiqunnesa*[74] (C.B.) under Assam R.C. Act 1955 (same position in appeal)
(iii) *Manisubrat*[50], East Punjab R.C. Act 1947 applied to Chandigarh
(iv) *Lakshmi Narayan*[37], W.B.R.C. Act

(All these cases have been considered in *Noorunnisa*[64], *2015)*

Part of para 13 of *Shah Bhojraj*[86] (C.B.) is quoted below:-

"Then again, Section 12 (1) enacts that the landlord shall not be entitled to recover possession, not "no suit shall be instituted by the landlord to recover possession".

The point of time when the sub-section will operate is when the decree for recovery of possession would have to be passed. Thus, the language of the sub-section applies equally to suits pending when Part II comes into force and those to be filed subsequently. The contention of the respondent that the operation of Section 12(1) is limited to suits filed after the Act comes into force in a particular area cannot be accepted."

In this case doubt was expressed as to whether appeal would be affected or not. However in *Rafiqunnissa*[74] (C.B.) it was held that appeal being continuation of suit would also be affected. Para 12 of *Rafiqunnissa*[74] *is quoted below:*

"(12) There is yet another point which is relevant in this connection. S. 5(1)(a) provides that the tenant shall not be evicted by the landlord from the tenancy except on the ground of non-payment of rent, provided, of course, the conditions prescribed by it are satisfied. If the legislature had intended that this protection should operate prospectively. it would have been easy to say that the tenant shall not be sued in ejectment; such an expression would have indicated that the protection is afforded to the suits brought after the Act came into force, and that might have introduced the element of prospective operation; instead, what is prohibited by s. 5 (1)(a) is the eviction of the tenant, and so, inevitably, the section must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by s. 5(1)(a), though they may have been initially instituted before the Act came into force."

In *Lakshmi Narayan*[37] also the Act was held to be applicable to pending appeals.

In respect of C.P. and Berar Letting of Houses and Rent Control Order 1949 there are two conflicting authorities of the Supreme Court, reported in *Dilip*[20] *(2000)* and *Mansoor Khan*[51]. In *Dilip*[20] suit by the landlord had been instituted in 1987 before regular Civil court alleging that the property in dispute was land and not building, hence R.C. order 1949 was not applicable. Suit was decreed and appeal was filed by the tenant which was pending in 1989 when two amendments were incorporated in the R.C. order. Through amendment of 27th June 1989 the order was made applicable on non-agricultural lands also. Through amendment of 26th October clause 13-A, infra, was added:

> "13-A: *No decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any Court or before any authority unless landlord produces a written permission of the Collector as required by Sub-clause (1) of clause 13."*

Allowing the appeal the Supreme Court held that the suit was liable to be dismissed in appeal before the District Court as suit includes appeal. It further held that the amendment was prospective in force but had retroactive effect.

However in *Mansoor Khan*[51] neither section 13A was noticed nor the authority of *Dilip*[20]. In *Mansoor Khan*[51] suit had been instituted in 1985 when the area in which the shop in dispute was situate was not a municipality hence R.C. Order 1949 was not applicable. In 1989 when the suit was pending, the area was declared a municipality (on 9.10.1989) and the Act became applicable on the shop in dispute. The Supreme Court considering only section 13(1) held that after the R.C. Order 1949 became applicable, the only consequence was that eviction proceedings could not be initiated except with the previous permission of Rent Controller but there was nothing in the R.C. order which made it applicable on the pending suit for eviction of tenant.

3. Exemption from the Applicability of Act

3A. General

Several Rent Control Acts provide exemption from their applicability to the buildings for few years from the dates of their construction, to the buildings held by or belonging to specified landlords e.g. government, educational institutions, religious/ charitable bodies including wakf or to the buildings used for particular purposes etc. (See Section 2 of U.P. R.C. Act quoted in synopsis 1) Since eighties several R.C. Acts have also exempted buildings rents of which are more than specified amount (.e.g. Rs. 1000/-, Rs. 2000/- or Rs. 3500/- per month). In some cases exemptions are provided by the Acts however certain Acts confer such power upon the State Government e.g. section 26 of A.P. R.C. Act 1960, under which in 1983 notification was issued exempting the buildings which were 10 years old and the buildings rents of which were more than Rs. 1000/- per month from the application of the Act (*Noorun Nissa*[64]), or T.N. R.C. Act 1960, Section 29 or Section 3(2) of M.P.R.C. Act 1951. Granting power of exemption to the State Government is perfectly valid and not violative of article 14 of the Constitution. The power cannot be said to be arbitrary as Preamble and other provisions of the Act provide sufficient guide lines. However, any individual exemption order by the Government may be challenged and in such situation Government will have to bring on record the material justifying the same vide *P.J. Irani*[68] (C.B.). In this case exemption granted to an individual building (under powers conferred by section 13 of old Madras R.C. Act 1949) was held to be *ultravires* Article 14 of the Constitution as no relevant material was brought on record to justify the same. Exactly same thing (conferment of power valid but exercise of power for an individual invalid) was held in *State of M.P.*[90] under M.P.R.C. Act. (See also synopsis 3C)

Exemption is granted to the buildings belonging to particular types of landlords e.g. Government, religious institutions and not to the parties or their relationship. If such a building is let out and thereafter sub-let by the tenant, sub-tenant cannot assert that as chief tenant does not belong to the category of landlords whose buildings are exempted hence his and his landlord's (i.e. chief tenant's) relationship shall be governed by the R.C. Act vide *Parwati*[71] and *Kesri*[32].

If building is exempted but landlord initiates proceedings for eviction of the tenant under the R.C. Act before the court/ authority provided there under and tenant does not raise objection regarding jurisdiction still the court/ authority is entitled to dismiss the petition / suit on the ground of want of jurisdiction as in respect of jurisdiction, no objection is required to be raised vide *B.Y. Narasimha*[9].

3B. Exemption for certain period:

Under Section 2(2) of U.P.R.C. Act it is provided that the Act shall not apply to a building for 10 years from the date of its construction or 40 years there from if the building is constructed on or after 26.4.1985. Normally 10 or 15 years moratorium is provided by different R.C. Acts. The purpose of such exemption is to encourage new construction vide *Ram Saroop*[75] and *Kishan*[34] (and the authorities mentioned in *Kishan*[34]) discussed in detail under synopsis 2D. Providing moratorium either by Act or notification there under is perfectly valid vide *Punjab Tin Supply* and *Kesho Ram*[31] under East Punjab R.C. Act, *Motor General*[54] (para 31) under A.P.R.C. Act and *Mohinder Kumar*[52] under Haryana R.C. Act. In the last case validity of Section 1(3) of Haryana R.C. Act, as amended in 1978 was challenged through writ petition before the Supreme Court under Article 32 of the Constitution. The amended section 1(3) provides as under:

"Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion."

In para 6, the challenge was summarized as follows:

"6. The validity is challenged mainly on the following grounds :

(1) The provision is arbitrary and is violative of Article 14 of the Constitution.
(2) In any event in so far as this provision operates retrospectively and seeks to take away the vested rights of the petitioner under the Act, prior to this amendment, the same must be held to be illegal and invalid."

The provision was held to be valid. However the legislature is at liberty to grant exemption even to the buildings constructed prior to the commencement of the Act also, as is the case under U.P. R.C. act [See synopsis 2 D (i)].

But providing cutoff date alone for exemption is arbitrary and violative of Article 14 of the Constitution. A.P. R.C. Act 1960 through its section 32 (b) provided that the provisions of the Act shall not apply to any building constructed on or after the 26th August 1957. The provision was struck down in *Motor General*[54]. Thereafter State Government exercising powers under Section 26 granted exemption for ten years. Section 32 was amended in 2005 and exemption for 15 years was provided (see *Noorun Nissa*[64]). In the same authority (*Motor General*[54]) in paras 15 to 22 it was held that such provision could be valid if it had been a temporary measure. Accordingly such provision in old U.P.R.C. Act (U.P. (Temporary) Control of Rent and Eviction Act 1947) providing 1.1.1951 as cutoff date was quite valid.

In *Mohinder Kumar*[52], supra, it was further held that period of exemption must be reasonable. A question may arise at this juncture as to whether 40 years exemption granted by Amendment of 1985 in U.P.R.C. Act to the buildings constructed after April 1985 may be said to be reasonable or unduly long, particularly in view of the subsequent Amendment of 1995 in the Act, bringing out the buildings rents of which are more than Rs. 2000/- per month from the ambit of the Act. It may be said that in 2025 and thereafter no building constructed after April 1985 may be carrying less than Rs. 2000/- per month rent. (As far as old, let out buildings are concerned, the rents are frozen by the Act) There is no authority of the Supreme Court on this point. However, in *Mohinder Kumar*[52] supra it was observed that:

> "*If the legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right. Obviously they could not have.....*"

Government of Haryana issued a notification on 22.10.1971 exempting the buildings constructed in 1968, 1969 and 1970 from the operation of the Act for a period of 5 years from the date of their completion. Accordingly a building completed in December 1968 would have come within the purview of the Act after December 1973. In a case Punjab and Haryana High Court had held that 5 years period would commence from 22.10.1971, the date of the notification. The Supreme court overruled the view in *Anand*[4].

(For consequence of expiry of period of exemption during pendency of suit (appeal etc.) for eviction see synopsis 2D)

3B (i) Date of Construction:

In order to avoid the confusion and difficulty in deciding date of construction a precise, even though fictional, definition of the same has been given under Explanation I(a) to section 2(2) U.P.R.C. Act quoted below:

S.2(2) Explanation I(a)

For the purposes of this section –

(a) The construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

In *Suresh Kumar Jain*[93] the facts were that on 15.11.1977 municipality issued notice to the landlord proposing to fix house tax on the house in dispute and inviting objections. The objections were filed. Thereafter 30.01.1978 Head Clerk of the municipality inspected the building and reported its complete constructions and letting out of part thereof. On the same day Municipal Board issued notice fixing date for hearing the objections. The Supreme court in para 30 held that 30.1.1978 denoted both the contingencies of reporting and recording. It was also held that whether inspection was in accordance with U.P. Municipalities Act or not was wholly immaterial. The order of fixing house tax was challenged. Ultimately house tax was imposed w.e.f. 1.4.1981 (first assessment came into effect). The Supreme Court ultimately held that 30.1.1978 was the date of construction and not 1.4.1981.

In *Sudha Rani*[91] the municipal records showed that house tax was assessed / imposed w.e.f. 1.4.1983 but in column 10 'Q September 1982' was mentioned. It was held that it meant the quarter period of the year 1982 from first July to 30th September, and it could not be said that precise date of recording was available hence building would be deemed to have been constructed on 1.4.1983. (Suit had been filed on 21.8.1992) The Act was held not to be applicable.

In most of the cases dates of reporting or recording are not available hence only the date w.e.f. first assessment comes into effect is conclusive proof of date of construction. Even if the building is admittedly occupied after construction and / or let out before date of first assessment, still the date of construction will be deemed to be the date of first assessment and not date of actual occupation / letting out vide *Om Prakash*[66], *Nand Kishore*[59] and *Mundri Lal*[56]. See also *Ram Saroop*[75].

In *Lal Chand*[39] tenant of an old building vacated the same for demolition and reconstruction and was permitted to reoccupy the newly constructed building in 1970 as tenant. (The building had been allotted in 1959 to the tenant under old U.P.R.C. Act 1947.) After reconstruction house tax was for the first time assessed w.e.f. 1.10.1972. This date was held to be date of construction, as landlord had not reported date of completion of reconstruction to the local authority.

If house tax is increased (except general increase in the area) then it may be evidence of new construction and the date w.e.f. which increased house tax is levied may be the date of construction vide *Ram Saroop*[75]. In this authority it has also been held that the burden to prove date of construction lies upon landlord as tenant cannot know about this fact.

3B(ii) Addition /Renovation and Demolition / Reconstruction:

Under Karnataka R.C. Act 1999 it is provided under Section 2(3) (f) as follows:

"*Sec. 2(3) Nothing contained in this Act shall apply,-*

(f) to any premises constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.

Explanation –I- A premises may be said to be substantially renovated if not less than seventy-five percent of the premises is build new in accordance with the criteria prescribed for determining the extent of renovation;"

In *B.Y. Narasimha*[9] (under the above Act) first floor was added to single storied tenanted building and a garage was also built by the landlord in 1988 and added to the tenancy. In 1999 landlord filed eviction petition before JSCC under the R.C. Act seeking eviction on some ground available to him under the Act. Even though no plea of jurisdiction was raised by the tenant but the trial after recording the finding that the amount spent in addition to the tenanted building was in excess of 75% of the valuation of the house hence the premises would be deemed to have been constructed anew in 1988, held that the Act was not applicable as 15 years period had not expired and dismissed the petition. The Supreme Court approved the view of the Trial Court which had been affirmed by the High Court also (See also synopsis 3G for further discussion of this authority)

Explanation I(b) and (c) to Section 2(2) of U.P.R.C. Act are quoted below:

(b) *"construction" includes any new construction in place of an existing building which has been wholly or substantially demolished;*

(c) *Where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition;*

In *Lal Chand*[39], supra under 3B (i) after quoting Explanation I (a), (b) and (c) to section 2(2) of U.P.R.C. Act 1972 in para 7 it was held in para 10 as follows:

> *"10. The trial Court and the High Court also considered the oral and documentary evidence adduced in the case and went into the nature of various constructions made even with reference to the room which was under the occupation of Gian Chand, the father of the appellants. The courts found that the flooring was removed and lowered and the roof was also changed. The walls on two sides were totally removed and major changes were also made in the remaining two walls. In one of the remaining walls, a door was fixed and in the other certain other changes were made. After considering the evidence relating to the various constructions made in regard to the particular room which was under the previous occupation of Gian Chand, the courts below came to the conclusion that even this room must be treated as one newly constructed. This being a finding of fact, we cannot interfere as we do not find any infirmity in the said finding."*

(This authority has further been discussed in synopsis 2B) See also *Ramsroop*[75], supra under 3B (i).

However if dilapidated building is got vacated for demotion and reconstruction under Section 21(1)(b) of U.P.R.C. Act and thereafter newly constructed building is let out / allotted to the

same tenant under Section 24(2) (quoted in Synopsis 1) then the Act will apply to the same also.

In *Lal Chand*[39], supra , there was no agreement at the time of vacation regarding applicability of the R.C. Act. However in *Lachoo Mal*[36] an old building constructed before 01.01.1951 hence covered by old U.P.R.C. Act 1947 was vacated for reconstruction by the tenant under written agreement providing that newly constructed building would be let out by the landlord to him on same rent and "All the sections of the U.P. Rent Control and Eviction Act shall be fully applicable to this house. The first party (landlord) shall in no case be entitled to derive benefit from it as the property built after 01.01.1951." The Supreme Court held that on new building U.P.R.C. Act 1947 would be applicable. It further held that as a matter of public policy tenant cannot contract himself out of the Rent Control Act but the landlord can very well agree for its application, if it otherwise does not apply and in such matter no public policy would be involved defeating Section 23, Contract Act.

3C Religious Institutions:

In *S.K. Trust*[27] (under Karnataka R.C. Act) it has been held in para 13 as follows:

> *"Further, Section 2(7)(bb)(iii) states that the Act will not apply to any premises belonging to a religious or charitable institution. However, there is no material placed on record by way of pleadings to show whether the appellant is a religious or charitable institution. The plaint was never amended. The appellant seeks exemption. Exemption needs to be alleged and proved. Opportunity is required to be given to the respondent to meet the plea of exemption. In the circumstances, we are in agreement with the view*

expressed by the High Court that the said plea was not open to the appellant at the stage of second appeal, particularly in the absence of any material available to substantiate such plea."(underlining supplied)

In *S. Kandaswamy*[83], Section 29 of **T.N. R.C. Act 1960** granting power of exemption to the State Government was held to be valid. In exercise of the said power State Government had issued notification dated 16.8.1976 'exempting all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the Act.' The notification was held to be valid. Reliance was mainly placed upon *P.J. Irani*[68] (C.B.), supra under 3A (Reference was also made to *State of M.P.*[90], supra under 3A). Particular reference was made in paras 4 & 8 to the illustrative observation in *P.J. Irani*[68] that if such exemption were to be granted in favour of all buildings belonging to charities religious or secular such classification would be reasonable (para 16 of *P.J. Irani*[68]). Thereafter in paras 9 to 11 the material placed by the State Government to justify the exemption was discussed and found sufficient and relevant. The material consisted of counter affidavit and supplementary affidavit filed by joint and deputy secretaries of Home department stating that frozen rents were not sufficient to meet the expenses of trusts etc. running temples and other religious institutions. It is submitted that these conditions and circumstances are prevalent in the entire country and are sufficient to justify exemption to religious / charitable institutions in every state ipso facto. This is how this case has been interpreted in *Christ The King*[16] under **Kerala R.C. Act 1965** Section 25 of which confers power of exemption on the Government and in exercise thereof the Government issued notifications in 1992 exempting the buildings of churches / mosques and other religious institutions of minorities from the operation of certain provisions of the Act. Section 25 uses the words 'public interest'. After comparing the languages of Section 29 of T.N. R.C. Act and section 25 of Kerala R.C. Act it was held

that the difference was in consequential. The High Court had quashed the notifications on the ground that government had not brought on record any material to justify the exemption. The judgment of the High Court was set aside on the ground that in view of general observations of *S. Kandaswamy*[83] it was not necessary. Explaining *S. Kandaswamy*[83] it was held in first sentence of para 6 as follows:

> *"The law had been stated by this Court to the effect that public religious or charitable endowments or trusts constitute a well recognized group which serves not only public purposes, but disbursement of their income is governed by the objects with which they are created and buildings belonging to such endowments or trusts clearly fall into a class distinct from the buildings owned by private landlords."*

In *AVGP Chettiar*[1] under **T.N. R.C. Act 1960** it was observed that constitutional validity of the notification dated 16.8.1976 had been upheld in *S. Kandaswamy*[90]. Thereafter it was held that as in earlier proceedings under section 92 C.P.C., in between the same parties (landlord and tenant) it had been held that the trust was Religious Endowment or Religious charity hence exemption was available to it. (under T.N. Hindu Religious and Charitable Endowment Act 1959, Section 6(16) and (17) Religious Charity and Religious Endowment are qualified by the words 'public').

In *Mulla Gulam Ali*[55] under **T.N. R.C. Act 1960** it was held in para 3 and para 4 as follows:

> *"3….. It is clear from the trust deed that objects of the trust are to give donations to educational and charitable institution; to open and maintain schools and colleges for imparting general or technical education; to give scholarships to poor and deserving students studying in schools and colleges to enable them to prosecute further or*

higher studies; to donate to hospitals, maternity and medical homes, or centers established for the benefit of the public; to give medical aid or assistance to poor people especially to deaf and dumb, widows, destitutes or orphans; to establish pilgrim centers at important places of public worship and maintain the same; to donate for feeding during important public festivals such as Ramzan or Moharrum etc., and/or during times of natural calamities such as floods, fire or famine; to help the poor, whether male or female, adults or children for education or higher studies; and to continue for such other charitable purposes which tend to promote international Welfare enuring to the benefit of the public and public institutions for the benefit of the public.

4. The mere fact that the control in respect of the administration of the trust vested in a group of people will not itself take away the public character of the trust. Indeed if the trust is not administered properly and the objects of the trust are not carried out certainly for the benefit of the public resort can be had to section 92 of the Civil Procedure Code and get a scheme framed for the proper administration of the trust and by displacing the trustees who are presently managing the trust. If that is the position in law we fail to understand as to how the High Court took the view that in spite of the finding recorded by the Courts below that the appellant is a public charitable institution and is engaged in such activities and has given several donations to several institutions which are exhibited as receipts before this Court, we find no substance in the contention that it is not a charitable trust. The finding recorded by the High Court in this regard is, therefore, set aside and the findings recorded by the courts below are restored."

Under **Madras City Tenant's Protection Act 1921-22** it is provided that in case tenant has constructed building on the land let out to him then under certain circumstances and on fulfillment of certain conditions landlord may be directed to transfer the land to the tenant. An amendment was incorporated in Section 1 of the said Act in 1996 [by in corporating clause (f) to sub section (3)] providing that the Act shall not apply to the tenancy of land owned by religious institutions or religious charities belonging to Hindu, Muslim, Christian or other religions. Pending proceedings were also directed to stand abated. Somewhat similar amendment had been made in 1960 in the said Act exempting tenancies of lands owned by Madras Corporation, Municipalities and certain other public bodies which was held to be valid by the Supreme Court in *S.M. Transports*[84]. In *Mylapore Club*[57] exemption granted to religious / charitable institutions through 1996 Amendment was held valid after referring to *S.M. Transports* and relying upon *S.Kandarswamy*[90]. On the basis of *Mylapore Club*[57], in *S. Bhagirathi*[82] it was held that Palani Roman Catholic Mission is religious institution within the meaning of section 1(3)(f) of the Act hence exempted from the operation thereof.

Exercising power under Section 3(2) of **M.P.R.C. Act 1961** the state Government on 7.9.1989 issued a notification exempting from all the provisions of the Act all the accommodation owned by

i) The Wakf registered under Wakf Act (No. 29 of 1954), or
ii) The Public Trust registered under the Madhya Pradesh Public Trusts act 1951 (No. XXX of 1951) for an educational religious or charitable purpose.

M.P. High Court in *Chintamani Chandra Mohan Agarwal v. State of M.P. 1994 MPLJ 597* had held that in respect of wakfs, it was not shown that there was any material before the Government for granting exemption. Accordingly the notification was quashed. This judgment was overruled by the Supreme

Court and the notification was upheld in *State of M.P. v. Smt. Chintamani Agarwal,* Civil Appeal no. 9909 of 1995 decided on 19.10.1995. Unfortunately this judgment of the Supreme Court is not reported any where. It is referred to in *Beti Bai*[11] (one of the judges was member of both the Benches) and *Ram Gopal*[77].

In ignorance of the judgment dated 19.10.1995 which had overruled High Court judgment in *Chintamani,* the Supreme Court in *Mangi Lal*[49] held that even though the Madhya Pradesh High Court in *Chintimani's* case had quashed the notification dated 7.9.1989 in respect of wakf properties, however, the effect of the said judgment would be that the entire notification being composite in nature stood set-aside, hence, even properties belonging to Hindu religious or other institutions were not exempt from the operation of the Act. The matter was afterwards considered by the Supreme Court in *Betibai*[11] and it was held that it was not brought to the notice of the Bench which decided *Mangi Lal's*[49] case that judgment of M.P. High Court in *Chintamani* had been overruled by the Supreme Court through judgment dated 19.10.1995. Accordingly it was held that as notification of the State Government dated 7.9.1989 stood revived, hence, properties of wakfs and public trusts for educational, religious or charitable purposes were exempt from the operation of the Act. In the said case the property in dispute belonged to a temple managed by a trust. Reliance was also placed upon *S. Kandaswami*[83]. It was observed in para 6 as follows:

> *".....Learned counsel for the State of M.P. has invited our attention to the letter dated March, 26, 1976, by the then Prime Minister of India addressed to the Chief Minister of the State of M.P., suggesting, for the reasons given in the said letter, to grant exemption of the provisions of the Act to other properties owned by the Wakf. Thereafter, the State of M.P. made inquiries from various other States in this respect. On*

receipt of the replies, the matter was considered and thereafter, the exemption notification was issued. We are satisfied that there was sufficient material before the State Government for issuing the impugned notification. We, therefore, set aside the impugned judgment of the High Court. We seek support from the judgment of this Court in S. Kandaswamy Chettiar v. State of T.N."

(Also quoted in *Ram Gopal*[77])

Betibai[11] was extensively quoted and followed in *Ramgopal*[77], and prayer for reference of the matter to the larger Bench was declined.

3D. Buildings Belonging to Governments and other Bodies:

By virtue of Section 2(1) (a) of U.P.R.C. Act 1972, the Act does not apply to :

"any building of which the Government or local authority or a public sector corporation or a cantonment board is the landlord."

However, if the above authorities are tenants then the Act applies except section 21(1)(a) by virtue of sub-section (8) of Section 21. (See the synopsis Partial Applicability).

As far as Maharashtra R.C. Act 1999 is concerned it applies if the Government is tenant but does not apply if such company corporation, Public Sector undertakings (PSU) etc is tenant, the paid up share capital of which is more than Rs. 1 crore by virtue of its section 3(1) infra:

"Section 3. Exemption
(1) This Act shall not apply -
(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect

of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more."

In *Leelabai*[40] the validity of section 3(1) (b) was assumed after extensively quoting from *Malpe*[47] in para 36 highlighting economic reasons. In *Malpe*[47] old Act (Bombay R.C.Act) had been severly criticized on being highly economic ignorant and deficient. It had further been held that the deficiency if not cured might, in future, impel the court to strike down the Act. According to *Leelabai*[40] the Act of 1999 was passed to make the rent control law confirm to the views and expectations of *Malpe*[47]. The only point for determination in *Leelabai*[40] was enumerated in para 29 as follows:

Point for Determination:

" 29. Whether the High Court was right in holding that the words PSUs in Section 3(1) (b) excluded Government companies as defined under Section 617 of the 1956 Act." (Companies Act)

The answer was in the negative and it was held that even the premises let out to Government companies having a paid up share capital of Rupees one crore or more was exempted from the Act. It was emphasized that the reason behind section

3(1)(b) was financial capacity to pay market rent and in this regard Government Companies were at par with other entities mentioned therein. Para 49 is quoted below:

> *"49. For the aforestated reasons, we hold that OIC, UIC and BPCL and such other Government companies as defined under Section 617 of the Companies Act are not entitled to protection of the Maharashtra Rent Control Act, 1999 in view of the provisions of Section 3(1)(b)."*

In *Carona*[14] (under the same Act) it was held that if after institution of the suit, or even after termination of tenancy, the tenant company by resolution reduced its paid up share capital from more than Rs. 8 crore to Rs. 41 lacs, the Act would not become applicable for the purposes of the pending suit. It was held that by unilateral act the tenant could not deprive the landlord of the benefit of non applicability of the Act which was available to him at the time of termination of tenancy and institution of the suit. Even though it has not been mentioned in the judgment but the position will be the same as is in case of expiry of period of moratorium from the applicability of R.C. Act during pendency of suit e.g. in U.P. and Haryana R.C. Acts (see also synopsis 2D.)

In *National Textile Corporation*[61] (under the same Maharashtra R.C. Act) it was held that as the tenant Cotton Mill vested in the Central Government under Textile undertakings (Nationalization) Act 1995 and thereafter all the rights of the Mill which had vested in the Central Government stood transferred and vested in N.T.C. hence section 3(1)(b) of the R.C. Act was attracted and the Act was not applicable on the building. It was further held that as N.T.C. was a corporation hence neither it was government nor agent of government, therefore, Section 3(1)(a) of the R.C. Act applying the Act on the buildings of which Government was tenant was not attracted.

3E. Other Buildings (E.G. Cinema and Mill)

Karnataka R.C. Act 1961 defined the building as follows:

> *"3(a) "building" means any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes -*
> *(i) the garden, grounds and out houses, if any appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut or part of building or hut;*
> *(ii) any furniture supplied by the landlord for the use in such building or hut or part of a building or hut;*
> *(iii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house."*

It was held in *B. G. Kumaravelu*[8] that if running cinema theatre was let out, it was lease of building with fittings etc. and not of fittings and furniture alone hence the R.C. Act was applicable thereupon. Reliance was placed upon *Uttamchand*[95] (under M.P.R.C. Act 1955) and *Dwarka Prasad*[22] (under U.P.R.C. Act 1947) on the ground that the definition of building in Karnataka Act was similar to the definition of 'accommodation' under both the other Acts.

In *Uttamchand*[95] lease of cinema theatre was held to be lease of binding with fittings machinery etc. and not of fitting and machinery alone.

However under new U.P.R.C. Act 1972 it is specifically provided under Section 2(1)(d) that the Act shall not apply to

> *"Any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of*

manufacture, preservation or processing of any goods) or as a cinema or theater, where the plaint and apparatus installed for such purpose in the building is leased out along with the building:

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts of the cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the cinema or theatre."

By virtue of clauses (c) and (e) of Section 2(1) (quoted in synopsis 1) the Act does not apply to factory or place of public entertainment.

Under the old U.P.R.C. Act 1947 there was no such provision. Accordingly the above three authorities will not apply to U.P.R.C. Act 1972.

Section 30(iii) of T.N.R.C. Act 1960 provides as under:

30: Nothing contained in this Act shall apply to

(i)……

(ii) ……..

(iii) any lease of a building under which the object of the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building.

Illustration (1)……

Illustration (2) where is the lease is of land and building together with fixtures, fittings, cinematograph talkie equipments, machinery and other articles the Act does not apply to such building.

Illustration (3)…….

Supreme Court in *K.V. Jai Singh*[28] held that the purpose of the lease in question and the intention of the parties was that the tenant would run the theatre as a going concern

therefore it was a composite lease of building and machinery etc. hence exempted from the operation of the Act under the above clause.

Similar will be the position under U.P.R.C. Act 1972.

3 F. Building Let out on Higher Rent

Several Rent Control Acts provide exemption from its applicability to the buildings whose rents are more than specified amount. Delhi R.C. Act 1958 was amended in 1988 and Section 3 (c) was inserted exempting buildings fetching more than Rs. 3500/- per month rent from the operation of the Act.

Provision of Delhi R.C. Act was held to be valid in *D.C. Bhatia*[17] (3 judges) and not ultra virus Article 14. It was further held that what must be the cut off rent was to be decided by the legislature. It was also held in para 57 as follows:

> *"57. In view of the aforesaid, we are unable to uphold the contention that the tenants had acquired a vested right in the properties occupied by them under the statute. We are of the view that the provisions of Section 3(c) will also apply to the premises which had already been let out at the monthly rent in excess of Rs. 3,500/- when the amendment made in 1988 came into force."*

In U.P. R.C. Act 1972 through amendment of 1994-95 clause (g) has been added to section 2 (1) exempting from the applicability of the Act any building whose monthly rent exceeds two thousand rupees.

However exempting only one type of building (residential) on the basis of higher rent (more than Rs. 400/-per month) is ultra virus Article 14 of the constitution vide *Rattan Arya*[81] which declared section 30 (ii) of T.N. R.C. Act 1960 containing such provision to be un constitutional and struck that down.

For the effect of such amendment on pending cases see next sub synopsis 3G.

3 F(i).Wealthy Tenant;

Section 1(3) (iii) of J.&K.R.C. Act 1966 exempts from the applicability of the Act the following:

> *"any tenancy in respect of any house or shop where the income of the tenant whether accruing within or outside the State exceeds rupees 40,000/- per annum"*

The provision was held to be valid in *Delhi Cloth & General mills*.

Section 3(1)(b) of Maharashtra R.C. Act 1999 provides as under:

> *This Act shall not apply to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.*

Rich Companies Corporations and P.S.Us. when they are tenants have been brought out of the ambit of the R.C. Act as they can pay market rent. (See Synopsis 3D).

3G. Cases pending on the date on which exemption granted through Amendment in the Act:

The right of the tenant not to be evicted except on specified grounds and his other rights e.g. fixation of rent, restoration of amenities and deposit of rent conferred by R.C. Act are not his vested rights hence he loses the same the moment the protection of R.C. Act is taken away. However, landlord's right to evict the tenant on termination of tenancy is his vested right (under common law or general property law including Transfer of Property Act and Contract Act), which is eclipsed during applicability of R.C. Act. Accordingly in the absence of express provision to the contrary in the R.C. Act, if the landlord has initiated the proceedings for eviction and thereafter the R.C. Act

applies, pending proceedings are not affected. (See also synopsis 2D) However if tenant has started some proceedings under the R.C. Act and thereafter the protection of the Act is withdrawn, pending proceedings are affected and have to be dismissed as infructous vide *Parripati*[70] (under A.P. R. C. Act) para 13 of which is quoted below:

> *"13. According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlords normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant therefore the protection does not create any vested right which can operate beyond the period of protection or during the period of protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant. It is for this reason that the analogy sought to be drawn by Shri Subbarao between the landlord's and the tenant's rights relying upon the decision of this Court in is misplaced. In that case the landlord's normal right to evict the tenant from the premises was not interfered with for the first ten years of the construction of the premises by an exemption*

specifically incorporated in the protective Rent legislation in question. The normal rights was obviously the vested right under the general law and once accused it continued to operate. The protection given to the tenant by the Rent legislation came into operation after the expiry of the period of 10 years. Hence, notwithstanding the coming into operation of the protection and in the absence of the provisions to the contrary, the proceedings already commenced on the basis of the vested right could not be defeated by mere passage of time consumed by the said proceedings. It is for this reason that the Court there held that the right which had accrued to the landlord being a vested right could not be denied to him by the afflux of time."

In the said case tenant had filed three applications under the R.C. Act for fixation / reduction of rent which was Rs. 1300/- per month, for permission to deposit the rent and to prevent inconvenience. During pendency of the applications, through notification, the buildings rent of which was more than Rs. 1000/- per month were exempted from the operation of the Act. The Supreme Court held that from the date of notification the applications became infructous and Rent Controller thereafter had ceased to have justification to hear and decide the same.

In *D.C. Bhatia*[17], under Delhi R.C. Act (relied upon in *Parripati*[70], supra) position of cases pending on the date of amendment was not decided (para 62). It was decided in *Parripati*[70]. (*D.C. Bhatia*[17] has been discussed in detail in the previous sub-synopsis).

In *Vishwant Kumar*[99] (3 judges) under Delhi R.C. Act, following inter alia *Parripati*[70], *D.C. Bhatia*[17], supra and *M/s Ambalal Sarabhai*[3], infra, it was held that tenant's application for fixation of rent (reduction to Rs. 1350/- per month from Rs. 5000/-) pending on 01.12.1988 (when the Act was amended and

buildings fetching more than Rs. 3500/- per month rent were taken out of its ambit) did not remain maintainable.

In *Ambalal Sarabhai*[3], after placing reliance upon *D.C. Bhatia*[17], *Parripati*[70] and some more cases the principle was stated succinctly. In the said case under Delhi R.C. Act, at the time of amendment in the Act bringing out the building carrying more than Rs. 3500/- per month rent from its ambit, landlord's application for eviction of tenant under section 14 of the Act on the ground of sub-letting was binding before Rent Control. After the amendment of the Act, landlord continued the proceeding before Rent Controller and also instituted suit for eviction before regular Civil Court. It was held that each proceeding was maintainable but not both simultaneously. In para 10 three questions were posed as follows:

> *(1) Whether the landlord and tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under rent control legislation is withdrawn through amendment ?*
> *(2) Can a ground of eviction based on illegal sub-letting under proviso (b) to section 14 of the said Act be claimed by a landlord as a vested right ?*
> *(3) In case a protection given to a tenant under the Rent Act is said to be not a vested right and if that protection is withdrawn, can a landlord claim any ground of eviction under the Rent Act to be his vested right ?*

Thereafter in paras 34 to 37 it was held as follows:

> *"34. In cases where Section 6 is not applicable, the courts have to scrutinize and find, whether a person under a repeated statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various sub-clauses from (a) to (e) of Section 6. We have already*

clarified right and privileges under it is limited to those which is 'acquired' and 'accrued'. In such cases pending proceedings is to be continued as if the statute has not been repealed.

35. In view of the aforesaid legal principle emerging, we come to the conclusion since proceeding for the eviction of the tenant was pending when repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case. As it is landlord's accrued right in terms of Section 6. Sub-section (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words 'any right accrued' in Section 6(c) is wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute.

36. In view of the aforesaid findings we conclude, by recording our findings on the question posed earlier by holding :

(1) A landlord or tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under the Rent Act is withdrawn, except in cases where Section 6 of the General Clauses Act, 1897 is applicable;
(2) A ground of eviction based on illegal sub-letting under proviso (b) to Section 14 of the Rent Act would not constitute to be a vested right of a landlord, but it would be a right and privilege accrued within the

meaning of Section 6(c) of the General Clauses Act in a matter if proceeding for eviction is pending;

(3) When tenant has no vested right under a Rent Act having only protective right, withdrawal of such protection would not cover on a landlord a vested right to evict a tenant under Rent Act except where sub-clause (c) of Section 6 of the General Clauses Act is applicable."

In view of these findings we hold landlord has a right under the repealed Rent Act by virtue of Section 6(c) of the General Clauses Act, which would save the pending proceedings before the Rent Controller, which may continue to be proceeded with as if repealed Act is still in force.

37. In view of our aforesaid findings, since Rent Controller has the jurisdiction over the subject-matter, it will not be right for the landlord to continue with two parallel proceedings; one under the General Law and other before the Rent Controller. Hence we further order that the respondent- landlord withdraw one of the two proceedings within a period of 6 weeks from today."

Same view has been taken in *R. Kapilnath* without specifically referring to *Ambalal,* supra. (In this judgment no authority has been mentioned). Even reference to the principle that landlord's right to evict tenant is accrued or acquired right hence saved by General Clauses Act has not been adverted to. In this case suit for eviction of tenant was filed on a ground available to the landlord under R.C. Act (Karnataka R.C. Act 1961) as the Act was applicable at that time. Suit was filed before Munsif as provided by the R.C. Act. The suit was decreed. Thereafter revision before ADJ was filed in 1990 which was dismissed on 14.9.1995. Thereafter second revision filed before the High Court was also dismissed hence the matter was carried

to the Supreme Court. Through an amendment in the Act w.e.f. 18.5.1994 (during pendency of revision before ADJ) such types of buildings as the building in question were granted exemption and taken out of the ambit of the R.C. Act. No argument in this regard was raised by the tenant either before ADJ or High Court or taken in the S.L.P. as originally filed in the Supreme Court. It was taken subsequently as additional ground. The Supreme Court rejected the contention that after exemption Munsif lost jurisdiction to decide the matter on the following grounds:

i) The question was not raised before ADJ or High Court
ii) Before the amendment in the Act, Munsif had already decided the suit.
iii) The Amending Act is neither expressly nor impliedly retrospective and has specifically been brought into force w.e.f. 18.5.1994.
iv) It is principle of interpretation that a new law bringing about a change in forum does not affect pending actions, in the absence of an express or implied contrary intention/ provision and in the Amending act there is no such contrary provision.

Following the authority of *Ambalal*[3], supra, Allahabad High Court in *Abrar Ahmad v. R.C.E.O. 2013 (2) ARC 713* held that even though during pendency of Release application of the landlord under section 16 of U.P.R.C. Act before Rent Control and Eviction Officer (delegatee of D.M.) the building being wakf property was taken out of the ambit of the Act (in 1994-95) still the Release application could validly be pursued by the landlord.

In *Charanjit Lal*[15] under Delhi R.C. Act a go-down was let out to four brothers on Rs. 2500/- per month in 1977. Section 6A of the Act permits the landlord to increase the rent by 10% after every three years by serving notice upon tenant. By serving requisite notices the rent was enhanced from time to time and it became more than Rs. 3500/- hence by virtue of section 3(c) the

building came out of the ambit of the Act. Thereafter suit before regular Civil court was filed which was decreed. The Supreme Court approving the decree held that the tenancy was one and joint hence the building was beyond the purview of the Act and it could not be said that each brother was separate tenant and paying one fourth of total rent which (one fourth) was less than Rs. 3500/- per month hence the Act was applicable.

Similarly in *M/s Nopany Investments*[41], also under Delhi R.C. Act, it was held that even during pendency of eviction proceedings before Rent Controller notice of 10% enhancement in rent under section 6A could be given by the landlord and for that no permission of Rent Controller was required. The landlord afterwards had withdrawn the proceedings pending before the Rent Controller and had instituted suit for eviction before regular Civil Court on the ground that after enhancement rent of the tenanted building became more than Rs. 3500/- per month hence R.C. Act ceased to be applicable thereupon. Suit was decreed. Supreme Court did not find any fault therewith.

In another context, in *M/s Rawalmal Naraindas*[45] it has been held that if a building is having different door numbers for different portions, each portion would be separate unit and the entire building will not be one unit. Accordingly if different portions of a building are let out to different persons (or to same person by different leases) and rent of each portion is less than the rental limit for applicability of the R.C. Act, but the total rent is more than that, still each tenant of separate portion will be entitled to the protection of the R.C. Act.

In *B.Y. Narasimha*[9], a case from Karnataka, the tenanted building was constructed (substantial addition and renovation) in 1988. Eviction petition was filed in 1999 under Karnataka R.C. Act 1961. During the pendency of the petition new R.C. Act of 1999 was passed which was enforced from December 2001. Eviction petition was dismissed in November 2005 on the ground

that under the new Act new buildings were exempted from its operation for 15 years and in December 2001 when the new Act was enforced 15 years period had not expired. The Supreme Court unpheld the order. Paras 10 and 11 are quoted below:

> *"10. We are also unable to accept the contention that the date on which the order was passed the 15 years period was over and the proceeding had thus became maintainable. We are of the view that the decision in Sudhir G. Angur has no application to the facts of the case. The maintainability of the proceeding was to be decided with reference to the date on which the Rent Control Act, 1999 came into force and not the date on which the order was passed by the trial court. A proceeding that was incompetent on the date the Act came into force would not revive merely because it remained pending before the court.*
>
> *11. Counsel for the petitioner lastly submitted that the intent of section 3(2)(f) (sic 2(3)(f)) was to give some benefit to the landlord and further that the proceeding would not abate under Section 70(2)(c) of the Act. We find no force in the submission. It is indeed true that Section 2(3) (f) is beneficial to the landlord but then it was for the land lord, Narayan Shankar Rao to withdraw the proceeding on coming into force on the 1999 Act in terms of Section 2(3)(f) and to proceed against the tenant under the general law governing the landlord and tenant relationship. That course having not been adopted the proceeding under the Rent Control Act was clearly not maintainable and was rightly dismissed by the trial court."*

4. Other changes in the Act or Repeal and Re-enactment, effect on Pending Proceedings.

4.A. Changes in the Act:

Through amendment in Section 13(3) (a)(iii) of East Punjab R.C. Act 1949 landlord's right to get the tenanted building vacated for demolition and reconstruction was further restricted and made more cumbersome. The Supreme Court in *Moti Ram*[53] (para 8 infra) held that the amendment would not affect pending cases, as it was in regard to a matter of substantive law and not in relation to any procedure hence it would be prospective and not retrospective. It was also held that the amendment affected vested right of landlord hence it would operate prospectively and would not affect pending proceedings. Para 8 of the authority is quoted below:

> *" para 8: .....There is no doubt that if this amended provision applied to the present case respondent 1 would not be entitled to obtain an order of ejectment. It is plain that by the amendment Legislature has imposed rigorous limitations on a landlord's right to recover possession in the case of any building or rented land. The question is whether this amendment can be said to be retrospective in operation. It is clear that the amendment made is not in relation to any procedure and cannot be characterised as procedural. It is in regard to a matter of substantive law since it affects the sub-stantive rights of the landlord. It may be conceded that the Act is intended to provide relief to the tenants and in that sense is a beneficial measure and as such its provision should be liberally construed; but this principle would not be material or even relevant in deciding the question as to whether the new provision is retrospective or not. It is well-settled that where an amendment affects vested rights the amendment would operate prospectively unless it is expressly made*

retrospective or its retrospective operation follows as a matter of necessary implication.…"

In the Constitution Bench authority of *Shyam Sunder*[89] major portion of the above para of *Moti Ram*[53] was quoted in para 37 and agreement with the said view was expressed in next para.

However, in *Ramji*[79] under Bombay R.C. Act 1947, an amendment in the Act in 1975 permitting the tenant to adjust in rest water tax or water charges paid by him on behalf of the landlord directly to the Municipal Corporation was held applicable to pending eviction proceedings. Para 14 is quoted below:

"14. Justice G.P. Singh states in Principles of Statutory Interpretation (Ninth Eviction, 2004 at page 462) - "the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. The rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its action is drawn from time antecedent to its passing." In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha - AIR 1961 Supreme Court 1596 the Constitution Bench held that the Bombay Act No. 57 of 1947 is a piece of legislation passed to protect the tenants against the evil of eviction. And the benefit of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending on the date of coming into force of the legislation."

However *Shah Bhojraj*[86] had based the above quoted observations on specific language of the section concerned and not on some general principle of interpretation.

4B.: Repeal and Re Enactment:

If old Act is repealed and replaced by a new Act, regarding position of pending cases normally provision is made in the new Act. U.P.R.C. Act 1972 repealed U.P.R.C. Act 1947 through Section 43(1). Section 43 (2) of the new Act contained detailed provisions in respect of various proceedings pending under the repealed Act.

Karnataka R.C. Act 1999 (34 of 2001) repealed its predecessor 1961 Act through Section 70 (1) . Section 70 (2) infra, dealt with pending proceedings. It did

> *"70 (2) Notwithstanding such repeal and subject to the provisions of Section 69,-*
>
> *(a) all proceedings in execution of any decree or order passed under the repealed Act, and pending at the commencement of this Act, in any Court shall be continued and disposed off by such Court as if the said enactment had not been repealed; ?*
>
> *(b) all cases and proceedings other than those referred to in clause (a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act;*
>
> *(c) all other cases and proceedings pending in respect of premises to which this Act does*

not apply shall as from the date of commencement of the Act stand abated."

As the above sub-section does not say anything about SLP or appeal pending before Supreme Court hence the same has to be decided in accordance with the old Act vide *Raminder Singh*[78] (para 6). However in *P. Suryanarayana*[69] under the same Act at the time of repeal, revision before High court arising out of proceedings for eviction on the ground of bonafide need was pending. The Supreme Court held that the High Court rightly decided the matters in accordance with the new Act.

5. Partial Applicability/ Inapplicability of Act

Under Bombay R.C. Act 1947 the State Government exercising powers under Section 2(3) and 6(2) extended Part II of the act (Sections 6 to 31) to a new area Koregaon village to premises let out; one room on the front was to be used for residence, the other room on the back for business. The Supreme Court in *Nilesh*[63] held that the lease was not a composite tenancy or a tenancy for a mixed purpose but it was an integrated contract of tenancy for dual purposes. It further held that as one purpose (residence) was protected under the Act hence the whole tenancy including the other purpose (business) will be covered by the R.C. Act. It was also held that in case of composite tenancy or tenancy for mixed purpose dominant purpose would have to be seen.

By virtue of section 25 B of Delhi R.C. Act a speedier procedure is to be adopted by the Rent Controller in case of eviction petition on the ground of landlord's bonafide need or the ground that landlord is Government employee and required to vacate Government accommodation. In both these situations tenant has to be obtained leave of the Rent Controller to defend, Rent Controller is required to follow summary procedure of a Court of Small causes while hearing the case and no first or second appeal is maintainable against order of Rent Controller under both these provisions; instead only revision before the High Court is provided. This provision has been held to be constitutionally valid and not violative of Article 14 in *Kewal Singh*[33].

Under Section 29-A of U.P.R.C. Act (quoted in synopsis 1) if the tenant of a land has constructed a permanent structure thereupon with the consent of the landlord then only Section 20 of the Act (providing grounds on which eviction may be sought in suit) applies and not the other provisions of the Act e.g. Section 21 under which landlord can seek eviction of the tenant on the

ground of bonafide need or section 16, dealing with allotment or release.

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